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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 84 of 2006

Petitioners

1. Mohan Lal S/o Anandram Chauhan,
Aged about 27 years, R/o Vill.-
Thangan, Tahsil - Dabra, Distt. -
Janjgir-Champa (C.G.)
2. Smt. Sushila W/o Mohan Lal, aged
about 23 years, R/o Vill. - Thangan,
Tahsil - Dabra, Distt - Janjgir-
Champa (C.G.)
3. Mohitram S/o Pila Gountiya, Aged
about 50 years.
4. Uttra Bai W/o Mohitram, Aged about
45 years.

Petitioners 3 & 4 are R/o Village
Achritpali, P.S. Malkharondha, Distt.
Janjgir-Champa (C.G.)

Versus

Respondent

Smt. Kewati Devi D/o Lalaram, Aged
about 28 years, R/o Village Sodka,
P.S. - Kharsia, Distt.- Raigarh,
Presently residing at Gandhi Nagar,
Regal Pali Road, Raigarh, Distt :
Raigarh (C.G.)

(Petition under Section 482 of Cr.P.C)

Appearance:

Shri Arun Shukla, Counsel for the petitioners.

Shri Gautam Bhaduri, Counsel for the respondent.

ORAL ORDER
(27.06.2007)

SUNIL KUMAR SINHA, J.

(1) Heard.

(2) This petition is directed against the order dated 11.08.2006 passed in Criminal Revision No. 53/2006 by the IVth Additional Sessions Judge (F.T.C.), Raigarh (C.G.), whereby the said Court dismissed the criminal revision of the petitioners, which was filed against the order dated 27.2.2006 passed in Criminal Case No. 1471/2005 by the Judicial Magistrate First Class, Raigarh (C.G.).

(3) The brief facts are that the respondent filed a criminal complaint against the petitioners before the trial Court under Sections 494 & 109 read with Section 34 of I.P.C. making certain allegations. The Magistrate took cognizance in the matter by passing an order of registration and issuance of process on 22.10.2005 on the basis of prima facie evidence available before him for the purposes of registration. He directed for registration & issuance of process of the case under Sections 494 & 109 I.P.C. When the petitioners appeared before the Magistrate, they filed an application for dismissal of the complaint on 12.1.2006. The said application was dismissed by the Magistrate on 27.2.2006. The petitioners have challenged the aforesaid order dated 27.2.2006 before the revisional Court, in which the said Court dismissed their revision and upheld the order passed by the Magistrate. It is against this order, passed by the revisional Court, the present petition has been filed.

(4) Learned counsel for petitioners argues that in another proceedings filed by the respondent under Section 125 Cr.P.C., it was held that the respondent was not legally married wife of petitioner No.1, therefore, in light of that order passed by the said Court, the Magistrate should have dismissed the complaint, which was registered for the offence punishable under Sections 494 & 109 I.P.C., at the instance of the respondent.

(5) The revisional Court has dealt with the point in Para-11 of the impugned order. It has taken a view that the proceedings drawn before the Magistrate for grant of maintenance under Section 125 Cr.P.C. are in the nature of summary proceedings, therefore, the finding recorded by the Magistrate would not be binding in subsequent proceedings to hold that the respondent was not legally wedded wife of petitioner No.1. Moreover, the revisional Court also said that a suit for declaration that the respondent was legally wedded wife of petitioner No.1 is pending before the Family Court and no decree has been passed in the said suit regarding the factum of relationship between them,

therefore, the trial Court has rightly rejected the application of the petitioners for dismissal of the complaint on these grounds.

(6) So far as legal position pertaining to the registration of the complaint and issuance of process is concerned, it has been held by the Supreme Court in the matter of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi & others, AIR 1976 SC 1947 that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether these are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one. The Apex Court further said that it is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an un-doubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 which culminates into an order under Section 204. The Apex Court also said that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside.

(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their

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face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

(7) If we examine the order passed by the trial Court as also by the Sessions Court, it does not appear that either the order of issuance of process or the order of rejecting the application for dismissal of the complaint suffers with such inherent illegalities warranting interference by this Court under Section 482 of Cr.P.C.

(8) The petition has not merit, the same is accordingly dismissed.

Sd/-

Sunil Kumar Sinha
Judge